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Attorneys for Defendant, Howmedica Osteonics Corp

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COLLEEN JAEGER and WILLIAM JAEGER,

Plaintiffs,

v.

HOWMEDICA OSTEONICS CORP.

Defendant.

Case No. 3:15-cv-00164-HSG

**JOINT STIPULATION TO CONTINUE
HEARING AND BRIEFING DATES ON
DEFENDANT HOWMEDICA
OSTEONICS CORP'S MOTION FOR
JUDGMENT ON THE PLEADINGS, OR,
ALTERNATIVELY, FOR A CASE
MANAGEMENT CONFERENCE;
DECLARATION OF PAUL ASFENDIS;
AND ORDER**

Pursuant to Local Civil Rule 6-2(a), Plaintiffs and Defendant, by and through their counsel of record, hereby stipulate and agree Defendant Howmedica Osteonics Corp's ("HOC") current deadline of August 15, 2016 to re-file its Motion for Judgment on the Pleadings, be extended to October 10, 2016.

As good cause for the requested extension, the parties represent to the Court that counsel for both plaintiffs and defendant in this CerviCoreTM action are counsel of record in other

1 pending CerviCore™ cases across the country, and that they have scheduled and attended
 2 mediation sessions in this and other CerviCore™ cases on June 2, 2016 and August 10, 2016 in
 3 Philadelphia, Pennsylvania before Hon. Diane M. Welsh. The parties hope to resolve this and
 4 the other CerviCore™ cases at that time and avoid the need for further motion practice.

5 A brief summary of the relevant history follows:

- 6 ♦ On February 10, 2016, the Court granted HOC's Motion to Dismiss Plaintiffs'
 7 First Amended Complaint, but granted Plaintiffs leave to amend the pleadings.
 8 (ECF Doc. No. 75.)
- 9 ♦ On March 8, 2016, a case management conference was held, and pursuant to the
 10 deadlines set during that conference, on March 15, 2016, Plaintiffs filed a Second
 11 Amended Complaint. (ECF Doc. No. 85.)
- 12 ♦ On April 14, 2016, HOC filed a Motion for Judgment on the Pleadings, seeking
 13 dismissal of the Second Amended Complaint. (ECF Doc. No. 86.)
- 14 ♦ On April 22, 2016, having agreed to participate in global mediation of this and
 15 other CerviCore™ matters pending around the country, the parties stipulated to
 16 extend briefing deadlines for the motion until after mediation in June and August
 17 2016, or in the alternative, for HOC to terminate the motion with leave to file
 18 after the August 10, 2016 mediation session. (ECF Doc. No. 88.)
- 19 ♦ On April 22, 2016, the Court granted the stipulation to terminate the motion and
 20 allowed HOC to refile by August 15, 2016. (ECF Doc. No. 89.)
 21

22 Following the Court's April 22nd Order, the parties attended global mediation sessions on
 23 June 2nd and August 10th. The mediation sessions were productive and led to the mediator
 24 framing a global settlement proposal for both sides to consider. She allotted 30 days for this
 25 process, so if the parties are able to reach a global resolution, it will be within the next 30 to 45
 26 days.

27 The parties believe that re-filing and briefing the merits of HOC's Motion would be
 28 disruptive to the global settlement process and an impediment to resolving this case. Moreover,

1 the parties do not wish to consume Court resources or waste time in researching and briefing
2 HOC's motion should this matter resolve, which the parties are hopeful will be the outcome.
3 Accordingly, the parties request that HOC's time to re-file its Motion for Judgment on the
4 Pleadings be extended to October 10, 2016.

5
6 DATED: August 15, 2016

SEDGWICK LLP

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8 By: /s/ Mario Horwitz
Mario Horwitz
9 Attorneys for Defendant, Howmedica Osteonics Corp.

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11 DATED: August 15, 2016

ZOLL & KRANZ, LLC

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13 By: /s/ James O'Brien
14 James O'Brien (SBN 308239)
Attorneys for Plaintiffs
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ATTESTATION PURSUANT TO LOCAL CIVIL RULE 5

Pursuant to Local Civil Rule 5-1(i)(3) of the Northern District of California, I attest that concurrence in the filing of this document has been obtained from the other signatories to this document.

By: /s/ Mario Horwitz
Mario Horwitz

DECLARATION OF PAUL ASFENDIS

I, Paul Asfendis declare:

1. I am an attorney at law, and am admitted to practice in this action *pro hac vice* for Defendant Howmedica Osteonics Corp. ("HOC") I am counsel who is primarily responsible for the representation of Defendant HOC in the above-entitled action. I have personal knowledge of the matters set forth herein and, if called upon to testify, could and would testify competently thereto. I submit this Declaration in compliance with Local Civil Rule 6-2(a).

2. I am also counsel of record for Defendant HOC in the other pending CerviCore™ cases across the country. Counsel of record for Plaintiffs Colleen and William Jaeger, James O'Brien, is also counsel of record for plaintiffs in the other pending CerviCore™ cases across the country.

3. The parties, through counsel of record, have attended mediation sessions for this and other CerviCore™ matters on June 2, 2016 and August 10, 2016 in Philadelphia, Pennsylvania before Hon. Diane M. Welsh (Ret.).

4. Significant progress was made at mediation, and it is hoped that the parties will be able to report a settlement of this matter within the next 30 to 45 days. I have conferred with plaintiffs' counsel, Mr. O'Brien, concerning re-filing of Defendant's Motion for Judgment on the Pleadings. We have discussed that re-filing and briefing of this Motion will be disruptive to the settlement process and to the progress made at the mediation sessions.

5. We have both agreed that, in order to conserve the Court's resources and not waste the Court's time in researching and briefing this motion should this matter resolve, an extension to October 10, 2015 to re-file HOC's motion is appropriate and warranted.

6. Pursuant to Local Rule 6-2, there have previous time modifications in this case. The Court granted the Joint Stipulation by the parties to continue the Initial Case Management Conference from April 21, 2015 to May 5, 2015 [ECF Doc. No. 54], and the Court granted Defendant a four (4) day extension of time to file its Reply Brief in support of its Motion to Dismiss Plaintiffs' First Amended Complaint. [ECF Doc. No. 64] The Court also granted

1 plaintiffs additional time to file their Second Amended Complaint. [ECF Doc. Nos. 75 & 83]
2 The Court also held a status conference on March 8, 2016 in which the docket entry stated: "In
3 the event the case moves beyond the dismissal state, the Court will hold a further case
4 management conference regarding the remainder of the case schedule." [ECF Doc. No. 83]

5 I declare under penalty of perjury, pursuant to the laws of the United States, that the
6 foregoing is true and correct.

7 Executed on August 15, 2016 at New York, New York.

8
9 /s/ Paul Asfendis

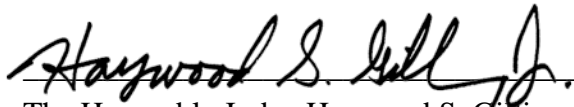
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ORDER

PURSUANT TO THE JOINT STIPULATION, IT IS SO ORDERED.

1. Defendant's time to re-file the Motion for Judgment on the Pleadings shall be extended to October 10, 2016.

DATED: August 16, 2016



The Honorable Judge Haywood S. Gilliam, Jr.
United States District Judge